

REMARKS

Applicant's undersigned attorney thanks the Examiner for his comments. Currently, Claims 1-19 are pending.

Amendment to the Claims

Claims 1-3 have been canceled.

Claim 8 has been amended to correct a typographical error in the spelling of *E. faecium*.

Claims 13 and 16 have been amended to depend from Claim 4.

New Claim 20, depending from Claim 4, has been added and falls within Group II. Support for this amendment is found in original Claim 3.

New Claims 21 and 22 have also been added and fall within the Group II and the elected species.

No new matter has been added by this Amendment. Applicants believe that no fees are owed because the number of claims currently pending does not exceed the number originally paid for.

Restriction/Election

Applicants request reconsideration and withdrawal of the restriction requirements with regard to Claims 5-8 as noncompliant and contrary to the rule governing species restrictions.

The species restriction set forth in paragraph page 5-6 of the Office Action is worded as follows:

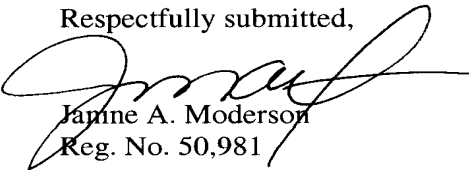
“The species [of Claims 5-8] are independent or distinct because they do not belong to any art recognized group nor do they share a substantial structural feature”

The live probiotic organisms recited in Claim 5, namely, *Lactobacillus* species, *Bifidobacterium* species, *Enterococcus* species, *Streptococcus* species, and combinations thereof are art recognized and classified as lactic acid bacteria. Thus, the species of Claims 5-8 are not mutually exclusive because 100% of the live probiotic organisms listed in Claim 5-8 fall within and form part of the art recognized group consisting of lactic acid bacteria.

Conclusion

If the Examiner feels that any issues remain regarding this Restriction Requirement, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Janine A. Moderson', is written over the typed name and registration number.

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